

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

MOUNTAIN EXPRESS OIL COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-90147 (DRJ)

(Jointly Administered)

**MCLANE COMPANY, INC.’S LIMITED OBJECTION TO DEBTORS’ CURE
AMOUNT FOR THE DISTRIBUTION SERVICE AGREEMENT
[Relates to Docket No. 728]**

McLane Company, Inc. (“**McLane**”) hereby files this limited objection (the “**Objection**”) to the Debtors’ *Notice to Counterparties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 728] (the “**Cure Notice**”), and in support thereof respectfully states as follows:

BACKGROUND

1. McLane and Debtor West Hill Ranch Group LLC are parties to that certain Distribution Services Agreement dated August 24, 2021 (as subsequently modified or amended, including by that certain First Amendment to the Distribution Service Agreement dated October 20, 2021, the “**DSA**”).

2. On March 18, 2023 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”).

3. Under the DSA, the Debtors are required to pay for all products received and

¹ A complete list of each of the Debtors in these Chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at www.kccllc.net/mountainexpressoil. The location of Debtor Mountain Express Oil Company’s principal place of business and the Debtors’ service address in these Chapter 11 cases is 3650 Mansell Road, Suite 250, Alpharetta, GA 30022.

services rendered by McLane within seven days of receipt of a statement. *See* DSA, Section 3.3. McLane makes deliveries to the Debtors' stores on a near daily basis. As of the Petition Date, McLane was owed approximately \$300,000 for goods delivered under the DSA (the "**Prepetition Balance**").

4. The entirety of the Prepetition Balance stemmed from goods delivered within the twenty-day period prior to the Petition Date, thus the entirety of the Prepetition Balance was entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code.

5. On March 21, 2023, the Debtors filed the *Debtors' Emergency Motion for Entry of Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Lien Claimants and Critical Vendors and (II) Granting Related Relief* [Docket No. 46] (the "**Critical Vendor Motion**"). The following day the Court entered the *Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Lien Claimants and Critical Vendors; (II) Authorizing Banks to Honor and Process Related Checks and Electronic Transfers; and (III) Granting Related Relief* [Docket No. 88] (the "**Critical Vendors Order**"), granting the Critical Vendors Motion.

6. The Critical Vendors Order authorized, among other things, the Debtors to pay certain critical prepetition vendors' claims in accordance with terms at least as favorable to the Debtors as the terms in place in the twelve months prior to the Petition Date, so long as such claimants continued to supply the Debtors with goods on a postpetition basis. The Debtors, as authorized by the Critical Vendors Order, paid McLane the entirety of the Prepetition Balance, and, consistent with the Critical Vendors Order, McLane has continued to supply, on a near daily basis, the Debtors with goods on credit consistent with the terms of the DSA.

7. On June 22, 2023, the Court entered the *Order (I) Approving Bid Procedures for the Sale of the Debtors' Assets, (II) Approving Bid Protections, (III) Scheduling Certain Dates*

with Respect Thereto, (IV) Approving the Form and Manner of Notice Thereof, and (V) Approving Contract Assumption and Assignment Procedures [Docket No. 701] (the “**Bid Procedures Order**”), which, among things, authorized certain procedures regarding the assumption and assignment of executory contracts and unexpired leases in connection with the Debtors’ proposed sale of substantially all of their assets (the “**Sale**”).

8. On June 28, 2023, the Debtors filed the Cure Notice which included a list, attached as Exhibit A to the Cure Notice, of contracts to be potentially assumed and assigned in connection with the Sale.

9. The DSA was listed on Exhibit A to the Cure Notice with an estimated cure amount of \$0.00 (the “**Proposed Cure Amount**”).

LIMITED OBJECTION

10. As noted above, McLane provides the Debtors goods on a near daily basis, and, as a result of such deliveries and the Debtors’ post-petition payments on account of such deliveries, the amount owed for goods and services provided under the DSA varies day to day.

11. Accordingly, while McLane does not *currently* object to the Proposed Cure Amount as inaccurate, McLane expressly reserves the right to object to the Proposed Cure Amount to the extent any amounts are due and owing as of the time of any future assumption or assumption and assignment in connection with the Sale or otherwise.²

² McLane also expressly reserves its right to object on the basis of adequate assurance of future performance at the time a purchaser (if any) in connection with the Sale is identified.

RESERVATION OF RIGHTS

12. McLane reserves its rights to be heard regarding all assumption and cure issues.

13. Furthermore, McLane reserves the right to object, update, supplement, and revise the Proposed Cure Amount with respect to the DSA at any time before the assumption of the DSA.

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Dated: July 12, 2023

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

/s/ Brandon Bell

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Counsel for McLane Company, Inc.

CERTIFICATE OF SERVICE

I certify that, on July 12, 2023, I caused a true and correct copy of this document to be served (i) by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Brandon Bell

Brandon Bell